

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

AMENDED IN ASSEMBLY AUGUST 23, 2011

AMENDED IN ASSEMBLY AUGUST 17, 2011

AMENDED IN ASSEMBLY JULY 14, 2011

SENATE BILL

No. 226

Introduced by Senators Simitian and Vargas
(Coauthor: Senator Rubio)
(Coauthor: Assembly Member Solorio)

February 9, 2011

An act to amend Section 65919.10 of the Government Code, and to amend Sections 21083.9, ~~21084, and 21177~~ *and 21084* of, to add ~~Section 21080.35~~ *Sections 21080.35, 21094.5, and 21094.5.5* to, and to add and repeal Sections 21084.2 and 21155.4 of, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 226, as amended, Simitian. Environmental quality.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (*EIR*) on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would exempt from the requirements of CEQA the installation of a solar energy system, including associated equipment, on the roof of an existing building meeting specified conditions. Because a lead agency would be required to determine whether a project would

be exempt under this provision, this bill would impose a state-mandated local program.

(2) CEQA requires a lead agency to call a scoping meeting for a project of statewide, regional, or areawide significance, and requires the lead agency to provide notice of at least one of those scoping meetings to specified entities, including a county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and county or city. Existing law requires, prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency to refer the proposed action to a city or county within or abutting the area covered by the proposal.

This bill would authorize this referral of a proposed action to adopt or substantially amend a general plan of a city or county to be conducted concurrently with the scoping meeting. The city or county would be authorized to submit specified comments at the scoping meeting.

(3) CEQA authorizes the Secretary of the Natural Resources Agency to certify and adopt guidelines to include a list of classes of projects that have been determined not to have a significant effect on the environment and are exempted from the requirements of CEQA (categorical exemption).

This bill would provide that a project's greenhouse gas emissions are not, in and of themselves, deemed to cause the exemption to be inapplicable under specified conditions.

This bill would also require the Secretary of the Natural Resources Agency, on or before March 1, 2012, to adopt a categorical exemption for solar photovoltaic projects located on disturbed agricultural lands meeting specified conditions. Because a lead agency would be required to determine whether the categorical exemption would apply to a project, this bill would impose a state-mandated local program. The bill would repeal this requirement on January 1, 2015.

This bill would require the Office of Planning and Research, on or before July 1, 2012, to prepare, develop, and transmit to the Natural Resources Agency, and the Secretary of the Natural Resources Agency, on or before January 1, 2013, to certify and adopt guidelines for statewide standards for infill projects that would promote specified goals and priorities.

(4) CEQA authorizes the use of a sustainable communities environmental assessment or modified ~~environmental impact report~~

EIR for the purposes of CEQA for a transit priority project meeting specified requirements.

This bill would authorize, until the adoption by a metropolitan planning organization of a sustainable communities strategy, the use of a sustainable communities environmental assessment or modified ~~environmental impact report~~ *EIR* for a transit proximity project meeting specified conditions. This bill would repeal this authorization on January 1, 2015.

~~(5) CEQA prohibits a person from bringing or maintaining an action or proceeding unless the alleged grounds for noncompliance with CEQA were presented to the public agency during the public comment period or before the close of the public hearing on the project before the issuance of the notice of determination.~~

~~This bill would authorize, until January 1, 2016, with specified exceptions, a lead agency to not consider written materials submitted after the close of the public comment period and would prohibit the use of those materials as a basis for challenging the lead agency's action pursuant to CEQA.~~

(5) CEQA limits its application, in the case of the approval of a subdivision map or a project that is consistent with the zoning or community plan for which an EIR was certified, to effects upon the environment that are peculiar to the parcel on which the project is located and were not addressed as significant effects in the EIR or if new information shows the effects upon the environment will be more significant than described in the prior EIR.

This bill would similarly limit the application of CEQA in the case of the approval of an infill project, as defined, that satisfies all applicable statewide standards established in the guidelines under (3) above if an EIR was certified for a planning level decision, as defined. Because this bill would require a lead agency to determine whether a project qualifies under this provision, this bill would impose a state-mandated local program.

(6) Existing law authorizes a county and a city to agree upon a procedure for referral to, and comment by, the city or county concerning the other entity's proposals to adopt or amend all or part of a general or specific plan or zoning ordinance, as specified.

This bill would make a technical, nonsubstantive change to this authorization.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In 2008, the Legislature passed and the Governor signed
4 Senate Bill 375, which was chaptered as Chapter 726 of the Statutes
5 of 2008, requiring metropolitan planning organizations to adopt a
6 sustainable community strategy that will comprehensively integrate
7 land use planning, transportation investments, and climate policy.
8 Part of Chapter 726 of the Statutes of 2008 includes incentives
9 under the California Environmental Quality Act (Division 13
10 (commencing with Section 21000) of the Public Resources Code)
11 to encourage development patterns that would help implement the
12 sustainable communities strategy.

13 (b) Metropolitan planning organizations will begin adopting
14 these strategies in 2011, but adoption will not be complete until
15 2013.

16 (c) One of the incentives created under Chapter 726 of the
17 Statutes of 2008 is the sustainable communities environmental
18 assessment that provides a more expeditious review under the
19 California Environmental Quality Act for residential and mixed-use
20 residential projects that have a proximity to transit.

21 (d) Because of the severe recession that continues to impact
22 California and because of the need to promote jobs in the
23 construction industry, it is important to make the sustainable
24 communities assessment available as early as possible in order to
25 promote the construction of projects that will foster the use of
26 transit.

27 SEC. 2. Section 65919.10 of the Government Code is amended
28 to read:

65919.10. If the proposed action is a change in a zoning ordinance, the county or city need not refer the zoning proposal to an affected city or county, as the case may be, if the zoning proposal is consistent with the general plan and the general plan proposal was referred and acted upon pursuant to this chapter.

SEC. 3. Section 21080.35 is added to the Public Resources Code, to read:

21080.35. (a) Except as provided in subdivision (d), this division does not apply to the installation of a solar energy system on the roof of an existing building *or at an existing parking lot*.

(b) For the purposes of this section, ~~a “solar energy system”~~ *the following terms mean the following:*

(1) *“Existing parking lot” means an area designated and used for parking of vehicles for at least the previous two years primarily for customers or employees of a commercial or industrial use, or students of employees of a public institutional use, or residents of a multifamily residential use consisting of five or more living units, consistent with requirements of the city or county for those uses.*

(2) *“Solar energy system” includes all associated equipment. Associated equipment consists of parts and materials that enable the generation and use of solar electricity or solar-heated water, including any monitoring and control, safety, conversion, and emergency responder equipment, as well as any equipment necessary to connect the energy generated to the electrical grid. “Associated equipment” does not include a substation.*

~~(c) (1) Except for the associated equipment necessary to connect the energy generated to the electrical grid, which may be located immediately adjacent to the parcel of the building, associated equipment shall be located on the same parcel of the building.~~

~~(2) Associated equipment shall not occupy more than 500 square feet of ground surface or disturb water bodies, plants identified as rare pursuant to Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code, wetlands, or riparian areas.~~

(c) (1) *Associated equipment shall be located on the same parcel of the building, except that associated equipment necessary to connect the energy generated to the electrical grid may be located immediately adjacent to the parcel of the building.*

(2) *Associated equipment shall not occupy more than 500 square feet of ground surface and the site of the associated equipment shall not contain plants protected by the Native Plant Protection*

1 *Act (Chapter 10 (commencing with Section 1900) of Division 2 of*
2 *the Fish and Game Code).*

3 (d) This section does not apply if the associated equipment
4 would otherwise require one of the following:

5 (1) An individual federal permit pursuant to Section 401 or 404
6 of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or
7 waste discharge requirements pursuant to the Porter-Cologne Water
8 Quality Control Act (Division 7 (commencing with Section 13000)
9 of the Water Code).

10 (2) An individual take permit for species protected under the
11 federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et
12 seq.) or the California Endangered Species Act (Chapter 1.5
13 (commencing with Section 2050) of Division 3 of the Fish and
14 Game Code).

15 (3) A streambed alteration permit pursuant to Chapter 6
16 (commencing with Section 1600) of Division 2 of the Fish and
17 Game Code.

18 (e) *This section does not apply if the installation of a solar*
19 *energy system at an existing parking lot involves the removal of a*
20 *tree required by the city or county to be planted, unless the tree*
21 *dies or there is no requirement to replace the tree.*

22 SEC. 4. Section 21083.9 of the Public Resources Code is
23 amended to read:

24 21083.9. (a) Notwithstanding Section 21080.4, 21104, or
25 21153, a lead agency shall call at least one scoping meeting for
26 either of the following:

27 (1) A proposed project that may affect highways or other
28 facilities under the jurisdiction of the Department of Transportation
29 if the meeting is requested by the department. The lead agency
30 shall call the scoping meeting as soon as possible, but not later
31 than 30 days after receiving the request from the Department of
32 Transportation.

33 (2) A project of statewide, regional, or areawide significance.

34 (b) The lead agency shall provide notice of at least one scoping
35 meeting held pursuant to paragraph (2) of subdivision (a) to all of
36 the following:

37 (1) A county or city that borders on a county or city within
38 which the project is located, unless otherwise designated annually
39 by agreement between the lead agency and the county or city.

40 (2) A responsible agency.

1 (3) A public agency that has jurisdiction by law with respect to
2 the project.

3 (4) A transportation planning agency or public agency required
4 to be consulted pursuant to Section 21092.4.

5 (5) An organization or individual who has filed a written request
6 for the notice.

7 (c) For an entity, organization, or individual that is required to
8 be provided notice of a lead agency public meeting, the requirement
9 for notice of a scoping meeting pursuant to subdivision (b) may
10 be met by including the notice of a scoping meeting in the public
11 meeting notice.

12 (d) A scoping meeting that is held in the city or county within
13 which the project is located pursuant to the federal National
14 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.)
15 and the regulations adopted pursuant to that act shall be deemed
16 to satisfy the requirement that a scoping meeting be held for a
17 project subject to paragraph (2) of subdivision (a) if the lead agency
18 meets the notice requirements of subdivision (b) or subdivision
19 (c).

20 (e) The referral of a proposed action to adopt or substantially
21 amend a general plan to a city or county pursuant to paragraph (1)
22 of subdivision (a) of Section 65352 of the Government Code may
23 be conducted concurrently with the scoping meeting required
24 pursuant to this section, and the city or county may submit its
25 comments as provided pursuant to subdivision (b) of that section
26 at the scoping meeting.

27 SEC. 5. Section 21084 of the Public Resources Code is
28 amended to read:

29 21084. (a) The guidelines prepared and adopted pursuant to
30 Section 21083 shall include a list of classes of projects that have
31 been determined not to have a significant effect on the environment
32 and that shall be exempt from this division. In adopting the
33 guidelines, the Secretary of the Natural Resources Agency shall
34 make a finding that the listed classes of projects referred to in this
35 section do not have a significant effect on the environment.

36 (b) A project's greenhouse gas emissions shall not, in and of
37 themselves, be deemed to cause an exemption adopted pursuant
38 to subdivision (a) to be inapplicable if the project complies with
39 all applicable regulations or requirements adopted to implement

1 statewide, regional, or local plans consistent with Section 15183.5
2 of Title 14 of the California Code of Regulations.

3 (c) A project that may result in damage to scenic resources,
4 including, but not limited to, trees, historic buildings, rock
5 outcroppings, or similar resources, within a highway designated
6 as an official state scenic highway, pursuant to Article 2.5
7 (commencing with Section 260) of Chapter 2 of Division 1 of the
8 Streets and Highways Code, shall not be exempted from this
9 division pursuant to subdivision (a). This subdivision does not
10 apply to improvements as mitigation for a project for which a
11 negative declaration has been approved or an environmental impact
12 report has been certified.

13 (d) A project located on a site that is included on any list
14 compiled pursuant to Section 65962.5 of the Government Code
15 shall not be exempted from this division pursuant to subdivision
16 (a).

17 (e) The changes made to this section by Chapter 1212 of the
18 Statutes of 1991 apply only to projects for which applications have
19 not been deemed complete on or before January 1, 1992, pursuant
20 to Section 65943 of the Government Code.

21 (f) A project that may cause a substantial adverse change in the
22 significance of an historical resource, as specified in Section
23 21084.1, shall not be exempted from this division pursuant to
24 subdivision (a).

25 SEC. 6. Section 21084.2 is added to the Public Resources Code,
26 to read:

27 21084.2. (a) On or before March 1, 2012, the Secretary of the
28 Natural Resources Agency shall amend the guidelines adopted
29 pursuant to Section 21084 to add solar photovoltaic projects that
30 are located on disturbed agricultural lands to the classes of projects
31 that have been determined not to have a significant effect on the
32 environment and that are therefore exempt from this division. The
33 amendment shall be limited to projects that meet all the following
34 conditions:

35 (1) The project has a maximum electrical generating capacity
36 of not more than 10 megawatts.

37 (2) The project is located exclusively on lands previously used
38 for agricultural production for at least five years that have been
39 mechanically disturbed or converted from native vegetation through
40 plowing, bulldozing, or other similar means.

1 (3) The project is not located on prime farmland, farmland of
2 statewide importance, unique farmland, and farmland of local
3 importance, collectively designated as important farmlands by the
4 Department of Conservation. For purposes of this section, land
5 designated in these important farmland categories shall not be
6 reclassified due to irrigation status.

7 ~~(4) The project is located exclusively on land that, based upon~~
8 ~~generally accepted biological survey or assessment methods, has~~
9 ~~been determined in a report of a qualified biologist on file with~~
10 ~~the agency to have no significant value as habitat for endangered,~~
11 ~~threatened, candidate, and other sensitive species, and that provides~~
12 ~~no significant habitat or wildlife corridors.~~

13 (4) (A) *The project is located on a parcel of land that satisfies*
14 *both of the following:*

15 (i) *Does not contain wetlands.*

16 (ii) *Does not have any value as a wildlife habitat.*

17 (B) *For the purposes of the paragraph, the following terms*
18 *mean the following:*

19 (i) *“Wetlands” has the same meaning as set forth in Section*
20 *328.3 of Title 33 of the Code of Federal Regulations.*

21 (ii) *“Wildlife habitat” means the ecological communities upon*
22 *which wild animals, birds, plants, fish, amphibians, and*
23 *invertebrates depend for their conservation and protection.*

24 (5) *The project does not do either of the following:*

25 (A) *Harm any species protected by the federal Endangered*
26 *Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant*
27 *Protection Act (Chapter 10 (commencing with Section 1900) of*
28 *Division 2 of the Fish and Game Code), and the California*
29 *Endangered Species Act (Chapter 1.5 (commencing with Section*
30 *2505) of Division 3 of the Fish and Game Code).*

31 (B) *Cause the destruction or removal of any species protected*
32 *by a local ordinance in effect at the time application for the project*
33 *was deemed complete.*

34 (5) The project is located on a parcel of land that is not larger
35 than 100 acres.

36 (b) (1) For the purposes of this section, a “photovoltaic project”
37 includes all associated equipment. Associated equipment consists
38 of parts and materials that enable the generation and use of solar
39 electricity or solar-heated water, including any monitoring and
40 control, safety, conversion, and emergency responder equipment,

1 as well as any equipment necessary to connect the energy generated
2 to the electrical grid. “Associated equipment” does not include a
3 substation.

4 ~~(2) (A) Except for the associated equipment necessary to~~
5 ~~connect the energy generated to the electrical grid, which may be~~
6 ~~located immediately adjacent to the parcel, associated equipment~~
7 ~~shall be located on the same parcel.~~

8 ~~(B) Associated equipment shall not occupy more than 500 square~~
9 ~~feet of ground surface or disturb water bodies, plants identified as~~
10 ~~rare pursuant to Chapter 10 (commencing with Section 1900) of~~
11 ~~Division 2 of the Fish and Game Code, wetlands, or riparian areas.~~

12 *(2) (A) Associated equipment shall be located on the same*
13 *parcel of the building, except that associated equipment necessary*
14 *to connect the energy generated to the electrical grid may be*
15 *located immediately adjacent to the parcel of the building.*

16 *(B) Associated equipment shall not occupy more than 500 square*
17 *feet of ground surface.*

18 *(c) In adopting an amendment pursuant to this section, the*
19 *Secretary of the Natural Resources Agency shall take into*
20 *consideration the potential for impacts on agriculture and natural*
21 *resources, and may impose additional conditions on the exemption*
22 *in order to avoid any significant effects on the environment,*
23 *including any effects associated with the decommissioning of the*
24 *project. The Secretary of the Natural Resources Agency shall*
25 *impose conditions to prevent the repeated application of the class*
26 *of exemption provided pursuant to this section to facilities in the*
27 *same vicinity and under forms of common ownership or control.*

28 *(d) This section shall remain in effect only until January 1, 2015,*
29 *and as of that date is repealed, unless a later enacted statute, that*
30 *is enacted before January 1, 2015, deletes or extends that date.*

31 *SEC. 7. Section 21094.5 is added to the Public Resources Code,*
32 *to read:*

33 *21094.5. (a) (1) If an environmental impact report was*
34 *certified for a planning level decision of a city or county, the*
35 *application of this division to the approval of an infill project shall*
36 *be limited to the effects on the environment that (A) are specific*
37 *to the project or to the project site and were not addressed as*
38 *significant effects in the prior environmental impact report or (B)*
39 *substantial new information shows the effects will be more*
40 *significant than described in the prior environmental impact report.*

1 *A lead agency's determination pursuant to this section shall be*
2 *supported by substantial evidence.*

3 *(2) An effect of a project upon the environment shall not be*
4 *considered a specific effect of the project or a significant effect*
5 *that was not considered significant in a prior environmental impact*
6 *report, or an effect that is more significant than was described in*
7 *the prior environmental impact report if uniformly applicable*
8 *development policies or standards adopted by the city, county, or*
9 *the lead agency, would apply to the project and the lead agency*
10 *makes a finding, based upon substantial evidence, that the*
11 *development policies or standards will substantially mitigate that*
12 *effect.*

13 *(b) If an infill project would result in significant effects that are*
14 *specific to the project or the project site, or if the significant effects*
15 *of the infill project were not addressed in the prior environmental*
16 *impact report, or are more significant than the effects addressed*
17 *in the prior environmental impact report, and if a mitigated*
18 *negative declaration or a sustainable communities environmental*
19 *assessment could not be otherwise adopted, an environmental*
20 *impact report prepared for the project analyzing those effects shall*
21 *be limited as follows:*

22 *(1) Alternative locations to the project need not be considered.*

23 *(2) Growth inducing impacts of the project need not be*
24 *considered.*

25 *(c) This section applies to an infill project that satisfies both of*
26 *the following:*

27 *(1) The project satisfies any of the following:*

28 *(A) Is consistent with the general use designation, density,*
29 *building intensity, and applicable policies specified for the project*
30 *area in either a sustainable communities strategy or an alternative*
31 *planning strategy for which the State Air Resources Board,*
32 *pursuant to subparagraph (H) of paragraph (2) of subdivision (b)*
33 *of Section 65080 of the Government Code, has accepted a*
34 *metropolitan planning organization's determination that the*
35 *sustainable communities strategy or the alternative planning*
36 *strategy would, if implemented, achieve the greenhouse gas*
37 *emission reduction targets.*

38 *(B) Consists of a small walkable community project located in*
39 *an area designated by a city for that purpose.*

1 (C) *Is located within the boundaries of a metropolitan planning*
2 *organization that has not yet adopted a sustainable communities*
3 *strategy and the project has a residential density of at least 20*
4 *units per acre or a floor area ratio for residential use of at least*
5 *0.75.*

6 (2) *Satisfies all applicable statewide performance standards*
7 *contained in the guidelines adopted pursuant to Section 21094.5.5.*

8 (d) *This section applies after the Secretary of the Natural*
9 *Resources Agency adopts and certifies the guidelines establishing*
10 *statewide standards pursuant to Section 21094.5.5.*

11 (e) *For the purposes of this section, the following terms mean*
12 *the following:*

13 (1) *“Infill project” means a project that is any of the following:*

14 (A) (i) *Residential, or retail or commercial uses.*

15 (ii) *Retail or commercial use shall have a floor area ratio for*
16 *those uses of at least 0.5.*

17 (B) *A transit station.*

18 (C) *A school.*

19 (D) *A public office building.*

20 (2) *“Planning level decision” means the enactment or*
21 *amendment of a general plan, community plan, specific plan, or*
22 *zoning code.*

23 (3) *“Prior environmental impact report” means the*
24 *environmental impact report certified for a planning level decision,*
25 *as supplemented by any subsequent or supplemental environmental*
26 *impact reports, negative declarations, or addenda to those*
27 *documents.*

28 (4) *“Small walkable community project” means a project that*
29 *is in an incorporated city, which is not within the boundary of a*
30 *metropolitan planning organization and that satisfies both of the*
31 *following requirements:*

32 (A) *Has a project area of approximately one-quarter mile*
33 *diameter of contiguous land completely within the existing*
34 *incorporated boundaries of the city.*

35 (B) *Has a project area that includes a residential area adjacent*
36 *to a retail downtown area.*

37 (C) *The project has a density of at least eight dwelling units per*
38 *acre or a floor area ratio of retail or commercial use of not less*
39 *than 0.50.*

1 *SEC. 8. Section 21094.5.5 is added to the Public Resources*
2 *Code, to read:*

3 21094.5.5. (a) *On or before July 1, 2012, the Office of*
4 *Planning and Research shall prepare, develop, and transmit to*
5 *the Natural Resources Agency for certification and adoption*
6 *guidelines for the implementation of Section 21155.6 and the*
7 *Secretary of the Natural Resources Agency, on or before January*
8 *1, 2013, shall certify and adopt the guidelines.*

9 (b) *The guidelines prepared pursuant to this section shall*
10 *include statewide standards for projects on infill sites that may be*
11 *amended from time to time and promote all of the following:*

12 (1) *The implementation of the land use and transportation*
13 *policies in the Sustainable Communities and Climate Protection*
14 *Act of 2008 (Chapter 728 of the Statutes of 2008).*

15 (2) *The state planning priorities specified in Section 65041.1*
16 *of the Government Code and in the most recently adopted*
17 *Environmental Goals and Policy Report issued by the Office of*
18 *Planning and Research supporting infill development.*

19 (3) *The reduction of greenhouse gas emissions under the*
20 *California Global Warming Solutions Act of 2006 (Division 25.5*
21 *(commencing with Section 38500) of the Health and Safety Code).*

22 (4) *The reduction in per capita water use pursuant to Section*
23 *10608.16 of the Water Code.*

24 (5) *The creation of a transit village development district*
25 *consistent with Section 65460.1 of the Government Code.*

26 (6) *Substantial energy efficiency improvements, including*
27 *improvements to projects related to transportation energy.*

28 (7) *Protection of public health, including the health of*
29 *vulnerable populations from air or water pollution, or soil*
30 *contamination.*

31 (c) *The standards for projects on infill sites shall be updated*
32 *as frequently as necessary to ensure the protection of the*
33 *environment.*

34 ~~SEC. 7.~~

35 *SEC. 9. Section 21155.4 is added to the Public Resources*
36 *Code, to read:*

37 21155.4. (a) *A transit proximity project that (1) includes a*
38 *major transit stop as part of the project, or (2) that is located within*
39 *one-quarter mile of an existing major transit stop or an existing*
40 *high-quality transit corridor may be reviewed under the procedures*

1 set forth in subdivision (b) or (c) of Section 21155.2 if the project
2 has incorporated all mitigation measures or best practices
3 recommended *to be included with the project* for protection of
4 public health by the local air district, air pollution control district,
5 or air quality management district. *Mitigation measures or best*
6 *practices adopted by a local air district, air pollution control*
7 *district, or air quality management district shall include, but are*
8 *not limited to, the following:*

9 (1) *The best available control technology for high efficiency*
10 *particle air filtration.*

11 (2) *Optimization of air intake locations to minimize indoor air*
12 *pollution.*

13 (3) *Consideration of tree landscaping and the setback of*
14 *residential buildings away from pollution sources.*

15 (b) For purposes of this section, a transit proximity project is
16 one that satisfies paragraphs (1) and (2) of subdivision (b) of
17 Section 21155 and is located within an urbanized area.

18 (c) For the purpose of this section, the following definitions
19 apply:

20 (1) “Major transit stop” has the same meaning as set forth in
21 Section 21064.3.

22 (2) “High-quality transit corridor” has the same meaning as set
23 forth in subdivision (b) of Section 21155.

24 (3) This section shall apply only to projects located within a
25 metropolitan planning organization and shall cease to apply to
26 projects upon the adoption by that metropolitan planning
27 organization of a sustainable communities strategy pursuant to
28 Section 65080 of the Government Code.

29 (d) This section shall remain in effect only until January 1, 2015,
30 and as of that date is repealed, unless a later enacted statute, that
31 is enacted before January 1, 2015, deletes or extends that date.

32 ~~SEC. 8. Section 21177 of the Public Resources Code, as~~
33 ~~amended by Section 11 of Chapter 496 of the Statutes of 2010, is~~
34 ~~amended to read:~~

35 ~~21177. (a) An action or proceeding shall not be brought~~
36 ~~pursuant to Section 21167 unless the alleged grounds for~~
37 ~~noncompliance with this division were presented to the public~~
38 ~~agency orally or in writing by any person during the public~~
39 ~~comment period provided by this division or prior to the close of~~

1 the public hearing on the project before the issuance of the notice
2 of determination.

3 (b) A person shall not maintain an action or proceeding unless
4 that person objected to the approval of the project orally or in
5 writing during the public comment period provided by this division
6 or prior to the close of the public hearing on the project before the
7 filing of the notice of determination.

8 (c) (1) This division does not require a public agency to consider
9 written materials submitted after the close of the public comment
10 period, unless those materials address any of the following matters:

11 (A) New issues raised in the response to comments by the lead
12 agency.

13 (B) New information released by the public agency subsequent
14 to the release of the draft environmental impact report, such as
15 new information set forth or embodied in a staff report, proposed
16 permit, proposed resolution, ordinance, or similar legislative
17 document.

18 (C) Changes made to the project after the close of the public
19 comment period.

20 (D) Proposed conditions for approval of a project, mitigation
21 measures for a project included in an environmental document, or
22 proposed findings required by Section 21081 or a proposed
23 mitigation and monitoring program required by paragraph (1) of
24 subdivision (a) of Section 21081.6, where the public agency
25 releases those documents subsequent to the release of the draft
26 environmental impact report.

27 (E) New information that was not reasonably known and could
28 not have been reasonably known during the public comment period.

29 (2) If a lead agency elects not to consider written materials
30 submitted after the close of the public comment period, except as
31 required pursuant to paragraph (1), the lead agency is not required
32 to respond to that written material, and that written material shall
33 not be raised in an action or proceeding brought pursuant to Section
34 21167.

35 (d) This section does not preclude any organization formed after
36 the approval of a project from maintaining an action pursuant to
37 Section 21167 if a member of that organization has complied with
38 subdivisions (a) and (b). The grounds for noncompliance may have
39 been presented directly by a member or by a member agreeing
40 with or supporting the comments of another person.

1 ~~(e) This section does not apply to the Attorney General.~~

2 ~~(f) This section does not apply to any alleged grounds for~~
3 ~~noncompliance with this division for which there was no public~~
4 ~~hearing or other opportunity for members of the public to raise~~
5 ~~those objections orally or in writing prior to the approval of the~~
6 ~~project, or if the public agency failed to give the notice required~~
7 ~~by law, including as required pursuant to Section 21092.2.~~

8 ~~(g) This section shall remain in effect only until January 1, 2016,~~
9 ~~and as of that date is repealed, unless a later enacted statute, that~~
10 ~~is enacted before January 1, 2016, deletes or extends that date.~~

11 ~~SEC. 9.~~

12 *SEC. 10.* No reimbursement is required by this act pursuant
13 to Section 6 of Article XIII B of the California Constitution because
14 a local agency or school district has the authority to levy service
15 charges, fees, or assessments sufficient to pay for the program or
16 level of service mandated by this act, within the meaning of Section
17 17556 of the Government Code.

18 ~~SEC. 10.~~

19 *SEC. 11.* This act is an urgency statute necessary for the
20 immediate preservation of the public peace, health, or safety within
21 the meaning of Article IV of the Constitution and shall go into
22 immediate effect. The facts constituting the necessity are:

23 In order to protect the environment and public health at the
24 earliest possible time, it is necessary for this act to take effect
25 immediately.